

House File 487

H-1222

1 Amend House File 487 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. Section 135P.1, subsections 1 and 2, Code 2017,
5 are amended to read as follows:

6 1. "*Adverse health care incident*" means an objective and
7 definable outcome arising from or related to patient care that
8 results in the death or ~~serious~~ physical injury of a patient.

9 2. "*Health care provider*" means a physician or osteopathic
10 physician licensed under chapter 148, a physician assistant
11 licensed ~~under~~ and practicing under a supervising physician
12 pursuant to chapter 148C, a podiatrist licensed under chapter
13 149, ~~or a chiropractor licensed under chapter 151, a licensed~~
14 practical nurse, a registered nurse, or an advanced registered
15 nurse practitioner licensed pursuant to under chapter 152 or
16 152E, a dentist licensed under chapter 153, an optometrist
17 licensed under chapter 154, a pharmacist licensed under chapter
18 155A, or any other person who is licensed, certified, or
19 otherwise authorized or permitted by the law of this state to
20 administer health care in the ordinary course of business or in
21 the practice of a profession.

22 Sec. 2. **NEW SECTION. 147.136A Noneconomic damage awards**
23 **against health care providers.**

24 1. For purposes of this section:

25 a. "*Health care provider*" means a physician or an
26 osteopathic physician licensed under chapter 148, a
27 chiropractor licensed under chapter 151, a podiatrist
28 licensed under chapter 149, a physician assistant licensed and
29 practicing under a supervising physician under chapter 148C, a
30 licensed practical nurse, a registered nurse, or an advanced
31 registered nurse practitioner licensed under chapter 152 or
32 152E, a dentist licensed under chapter 153, an optometrist
33 licensed under chapter 154, a pharmacist licensed under chapter
34 155A, a hospital as defined in section 135B.1, a health care
35 facility as defined in section 135C.1, a health facility as

HF487.1625 (3) 87

(amending this HF 487 to CONFORM to SF 465)

1 defined in section 135P.1, a professional corporation under
2 chapter 496C that is owned by persons licensed to practice a
3 profession listed in this paragraph, or any other person or
4 entity who is licensed, certified, or otherwise authorized or
5 permitted by the law of this state to administer health care
6 in the ordinary course of business or in the practice of a
7 profession.

8 *b. "Health care services"* means medical diagnosis,
9 treatment, evaluation, advice, or acts that are permitted under
10 chapter 148, 148C, 149, 152, 152E, 153, 154, or 155A, or any
11 other health care licensing statutes of this state.

12 *c. "Noneconomic damages"* means damages arising from
13 pain, suffering, inconvenience, physical impairment, mental
14 anguish, emotional pain and suffering, loss of chance, loss of
15 consortium, or any other nonpecuniary damages.

16 *d. "Occurrence"* means the event, incident, or happening,
17 and the acts or omissions incident thereto, which proximately
18 caused injuries or damages for which recovery is claimed by the
19 patient or the patient's representative.

20 2. The total amount recoverable in any civil action for
21 noneconomic damages for personal injury or death, whether in
22 tort, contract, or otherwise, against a health care provider
23 shall be limited to two hundred fifty thousand dollars for any
24 occurrence resulting in injury or death of a patient regardless
25 of the number of plaintiffs, derivative claims, theories of
26 liability, or defendants in the civil action.

27 3. The limitation on damages contained in this section
28 shall not apply as to a defendant if that defendant's actions
29 constituted actual malice.

30 Sec. 3. Section 147.139, Code 2017, is amended to read as
31 follows:

32 **147.139 Expert witness standards.**

33 If the standard of care given by a ~~physician and surgeon~~
34 ~~or an osteopathic physician and surgeon licensed pursuant~~
35 ~~to chapter 148, or a dentist licensed pursuant to chapter~~

1 ~~153~~ health care provider, as defined in section 147.136A, is
2 at issue, the court shall only allow a person the plaintiff
3 designates as an expert witness to qualify as an expert witness
4 and to testify on the issue of the appropriate standard of
5 care if the person's medical or dental qualifications relate
6 directly to the medical problem or problems at issue and the
7 type of treatment administered in the case. or breach of the
8 standard of care if all of the following are established by the
9 evidence:

10 1. The person is licensed to practice in the same or a
11 substantially similar field as the defendant, is in good
12 standing in each state of licensure, and in the five years
13 preceding the act or omission alleged to be negligent, has not
14 had a license in any state revoked or suspended.

15 2. In the five years preceding the act or omission alleged
16 to be negligent, the person actively practiced in the same or a
17 substantially similar field as the defendant or was a qualified
18 instructor at an accredited university in the same field as the
19 defendant.

20 3. If the defendant is board-certified in a specialty, the
21 person is certified in the same or a substantially similar
22 specialty by a board recognized by the American board of
23 medical specialties or the American osteopathic association.

24 4. If the defendant is a licensed physician or osteopathic
25 physician under chapter 148, the person is a physician or
26 osteopathic physician licensed in this state or another state.

27 **Sec. 4. NEW SECTION. 147.140 Expert witness — certificate**
28 **of merit affidavit.**

29 1. a. In any action for personal injury or wrongful
30 death against a health care provider based upon the alleged
31 negligence in the practice of that profession or occupation or
32 in patient care, which includes a cause of action for which
33 expert testimony is necessary to establish a prima facie case,
34 the plaintiff shall, prior to the commencement of discovery in
35 the case and within sixty days of the defendant's answer, serve

1 upon the defendant a certificate of merit affidavit signed by
2 an expert witness with respect to the issue of standard of care
3 and an alleged breach of the standard of care. The expert
4 witness must meet the qualifying standards of section 147.139.

5 *b.* A certificate of merit affidavit must be signed by the
6 expert witness and certify the purpose for calling the expert
7 witness by providing under the oath of the expert witness all
8 of the following:

9 (1) The expert witness's statement of familiarity with the
10 applicable standard of care.

11 (2) The expert witness's statement that the standard of care
12 was breached by the health care provider named in the petition.

13 *c.* A plaintiff shall serve a separate certificate of merit
14 affidavit on each defendant named in the petition.

15 2. An expert witness's certificate of merit affidavit does
16 not preclude additional discovery and supplementation of the
17 expert witness's opinions in accordance with the rules of civil
18 procedure.

19 3. The parties shall comply with the requirements of section
20 668.11 and all other applicable law governing certification and
21 disclosure of expert witnesses.

22 4. The parties by agreement or the court for good cause
23 shown and in response to a motion filed prior to the expiration
24 of the time limits specified in subsection 1 may provide for
25 extensions of the time limits. Good cause shall include
26 but not be limited to the inability to timely obtain the
27 plaintiff's medical records from health care providers when
28 requested prior to filing the petition.

29 5. If the plaintiff is acting pro se, the plaintiff shall
30 have the expert witness sign the certificate of merit affidavit
31 or answers to interrogatories referred to in this section
32 and the plaintiff shall be bound by those provisions as if
33 represented by an attorney.

34 6. Failure to substantially comply with subsection 1 shall
35 result, upon motion, in dismissal with prejudice of each cause

1 of action as to which expert witness testimony is necessary to
2 establish a prima facie case.

3 7. For purposes of this section, "*health care provider*"
4 means the same as defined in section 147.136A.>

5 2. Title page, lines 1 and 2, by striking <expert witnesses
6 and defenses> and inserting <noneconomic damage awards and
7 expert witnesses>

HINSON of Linn